IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 7758 of 2005(W)

PETITIONER:

C.BENCY, LPSA, MLP SCHOOL,
ARATTUPUZHA NORTH P.O.,
THRIKKUNNAPPUZHA, ALAPPUZHA.

BY ADV. SMT.C. BENCY(PARTY IN PERSON)

RESPONDENTS:

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1. STATE OF KERALA, REP.BY ITS SECRETARY
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. THE ASSISTANT EDUCATIONAL OFFICER,
AMBALAPPUZHA.

4. THE MANAGER, MLP SCHOOL,
ARATTUPUZHA NORTH P.O.,
THRIKKUNNAPUZHA, ALAPPUZHA.

BY GOVERNMENT PLEADER SHRI. LEKSHMI NARAYNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 7758/05

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE STAFF FIXATION ORDER ISSUED IN RESPECT FOR THE YEAR 2002-03

EXT.P2: -DO- OF THE STAFF FIXATION ORDER ISSUED IN RESPECT FOR THE YEAR 2003-04

EXT.P3: -DO- OF THE APPEAL PREFERRED BY THE MANAGER TO THE DY. DIRECTOR (EDUCATION), ALAPPUZHA DT. 16.8.02

EXT.P4: -DO- OF THE ORDER NO: B2/17089/02/K.DIS DT. 6.1.2003

EXT.P5: -DO- OF THE STAFF FIXATION ORDER ISSUED IN RESPECT FOR THE YEAR 197475

EXT.P6: -DO- OF THE ORDER OF THE DPI DT. 3.12. 03

EXT.P7: -DO- OF THE GOVT.A ORDER DT. 20.2.2004

EXT.P8: -DO- OF THE ORDER NO: D.DIS 49604/03 (RAI)DPI DT. 19.7.03

EXT.P9: -DO- OF THE GOVT. ORDER G.O. (RT) NO: 5285/04/GEDN. DT. 10.12.2004

jj /TRUE COPY/

P.S. TO JUDGE

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 7758 OF 2005

JUDGMENT

The petitioner is a Lower Primary School Assistant, working in M.L.P. School, Arattupuzha, managed by the 4th respondent. She was appointed as L.P.S.A on 1.6.1998. The same was approved by the controlling officer. During the year 2001-02, though there was a reduction in the posts of LPSA, she was accommodated by taking recourse to the ratio of 1 : 40. In 2002-03, there was a further reduction in the posts of LPSA and therefore, the petitioner could have been accommodated only by absolishing the shift system in Standard I. The Manager, anticipating sanction, ablished the shift system in Standard I and retained the petitioner in service. But, her appointment during the said academic year was not approved by the controlling officer. Since sufficient number of vacancies arose, she was re-appointed during the year 2003-04. As the abolition of the shift system in Standard I was not approved by the competent authority, there was break of service for the year 2002-03. The Manager and the petitioner moved the statutory authorities. Finally, the matter reached the Government. The Government by Ext.P7 communication dated 20.2.2004,

rejected the revision petition. The petitioner filed a detailed representation before the Government, claiming reconsideration of the matter. The said representation dated 25.3.2004 filed by the petitioner was reconsidered by the Government and rejected by Ext.P9 order dated 10.12.2004. This writ petition was filed, challenging Ext.P7 communication of the Government as also Ext.P9 order. Consequential reliefs are also sought, for approval of her appointment for the academic year 2002-03.

2. According to the petitioner, as per the provisions of G.O.(MS) No.147/85/G.Edn dated 6.7.1985, abolition of the shift system was permissible for accommodating existing teachers. The Manager has rightly exercised his power in this regard and therefore, the said decision of the Manager should have been approved and the petitioner's appointment for the year 2002-03 should have been sanctioned, it is submitted.

3. The Government have filed a counter affidavit, supporting the impugned orders. According to it, by continuing the shift system, the school can be run with the existing staff strength and without accommodating the petitioner. If the shift system is abolished, the same will result in additional financial burden to the Government.

4. The shift system can be abolished only with the previous sanction of the competent authority. In this case, the Manager has done it on his own

without waiting for any orders. Therefore, the continuance of the petitioner for the year 2002-03 was without any sanctioned post of LPSA to accommodate her. If the Government think that since the school could be run with the existing strength of teachers, additional financial commitment need not be shouldered by abolishing the shift system, the same cannot be said to be an illegal or irrational decision. Further, as mentioned earlier, the Manager absolished the shift system in Standard I for the said year without the previous sanction of the competent authority. Therefore, I find nothing illegal with Ext.P7 or Ext.P9. In the result, the writ petition fails and it is dismissed.

1st December, 2007. **K.BALAKRISHNAN NAIR, JUDGE**.

Nm/